



State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095  
(603) 271-2147 FAX (603) 271-6588



April 1, 2002

Ms. Lisa Howard  
P.O. Box 200  
Farmington, NH 03835

RE: Wetlands Bureau File #2001-01431, 735 Ten Rod Rd, Farmington

Dear Ms. Howard:

The enclosed Administrative Order requires restoration of the pond dredged within wetland jurisdiction on your property. However, DES will accept submission of an after-the-fact application to retain the pond if a complete application is received within thirty days of the receipt of the Order.

If you have any questions please contact our office at (603) 271-2147.

Sincerely,

Rene Pelletier  
Land Resources Manager

cc Gretchen Rule, Administrator, DES Legal Unit  
Farmington Conservation Commission  
Farmington Board of Selectmen  
F. X. Bruton, esq., McNeil, Taylor, & Galloway  
Property Owners Association of Yonder Plateau Inc.



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ADMINISTRATIVE ORDER  
No. WD 2002-14

RE: Ten Rod Road, Farmington

April 1, 2002

**A. INTRODUCTION**

This Administrative Order is issued by the Department of Environmental Services, Water Division to Mrs. Lisa Howard pursuant to RSA 482-A:6. This Administrative Order is effective upon issuance.

**B. PARTIES**

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH 03301.
2. Lisa Howard is an individual having a mailing address of P.O. Box 200, Farmington, NH 03835.

**C. STATEMENTS OF FACTS AND LAW**

1. Pursuant to RSA 482-A, the Department of Environmental Services ("DES") regulates dredging, filling, and construction in any bank, flat, marsh, wetland or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.
2. RSA 482-A:14, III provides that failure, neglect or refusal to comply with RSA 482-A or rules adopted under that chapter, or an order or condition of a permit issued under RSA 482-A, and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by RSA 482-A shall be deemed violations of RSA 482-A.
3. RSA 482-A:3 provides "No person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from the department."
4. Lisa Howard is the owner of land located at the corner of Chipmunk Lane and Blueberry Drive in Farmington, more particularly described on Town of Farmington Tax Map R-44 ("Map R-44") as Lot 11 ("the Property").
5. Everett Howard, husband of Lisa Howard, has acted on behalf of Mrs. Howard in dealing

with DES personnel about the Property

6. Blueberry Drive has drainage ditches that run along the eastern side of the road on the Property that allow road runoff to flow off the road, and prevent the road from flooding. Chipmunk Lane intersects Blueberry Drive at a "T" and runs east from Blueberry Drive.
7. An intermittent stream flows northwesterly through a set of double culverts under Chipmunk Lane, cuts across the corner of the Property, and flows westerly through a culvert under Blueberry Drive. The stream is delineated on Map R-44.
8. On July 26, 2001, DES received a complaint of wetlands violations on the Property that had occurred on or about July 19, 2001.
9. On August 14, 2001, DES personnel inspected the Property and found the following
  - a. Approximately 1,728 square feet of the stream and associated wetlands at the corner of Chipmunk Lane and Blueberry Drive on the Property was filled;
  - b. Approximately 1,046 square feet of two drainage ditches running adjacent to or on the Property were filled; and
  - c. A pond measuring approximately 2,500 square feet on the Property was excavated in a wetland area.
10. On September 6, 2001, DES issued a Letter of Deficiency to Mrs. Howard requesting that Mrs. Howard remove 3 areas of fill placed in three separate wetlands (measuring 546 sq.ft., 500 sq.ft., and 1,728 sq.ft.) within fifteen days.
11. On October 3, 2001, Mark West, a certified wetland scientist doing business as West Environmental and having a mailing address of 122 Mast Road, Suite 6, Lee, NH 03824, contacted DES and indicated he had been retained as Mr. Howard's consultant in this matter.
12. Subsequent field inspection including hand digging by Mr. West confirmed that the 546 square feet of fill along Blueberry Drive, and the 1,728 square feet of fill at the corner of Blueberry Drive and Chipmunk Lane, was placed within DES's jurisdiction, but disputed that 500 square feet of fill along Blueberry Drive was within DES's jurisdiction.
13. On October 17, 2001, DES personnel, accompanied by Mr. West and Mr. and Mrs. Howard, inspected the property. During the inspection, Mr. Howard acknowledged that he had filled the vegetated drainage ditches and had excavated the pond.
14. On November 29, 2001, DES personnel again inspected the Property and staked out a proposed restoration area at the intersection on Blueberry Drive and Chipmunk Lane. At that time, Mr. Howard agreed to have plans developed by an engineer for the restoration area by the end of December, 2001. He further agreed to remove 546 square feet of fill from in front of the culvert along Blueberry Drive on the Property and to submit an after-the-fact application for the pond on the Property.

15. On January 3, 2002, DES wrote a letter to the Howards' attorney, Francis X. Bruton, requesting the restoration plans as promised by Mr. Howard.
16. On January 18, 2002, DES personnel phoned Mr. Bruton regarding DES's expectations outlined in the January 3<sup>rd</sup> letter. Mr. Bruton stated that he would communicate these expectations to Mr. Howard.
17. On February 11, 2002, DES Wetlands Bureau personnel spoke with Mr. Howard on the phone. At that time, Mr. Howard indicated that he was unwilling to move forward with the proposed restoration plan as he had promised. Instead, Mr. Howard proposed an alternative restoration plan that involved crossing the intersection of Chipmunk Lane and Blueberry Drive adjacent to the Property with a long culvert that would cut diagonally northwest across the intersection.
18. Blueberry Drive and Chipmunk Lane are private roads owned and maintained by the Property Owners Association of Yonder Plateau ("the POA"). The POA is unwilling to allow the proposed restoration on their property.
19. As of the date of this Order, DES has received neither plans for the relocation of the stream at the intersection of Blueberry Drive and Chipmunk Lane on the Property, nor an after-the-fact application for pond construction on the Property. Further, the 546 square feet of fill blocking the northern culvert adjacent to Blueberry Drive, and the 1,728 square feet of fill at the corner of Blueberry Drive and Chipmunk Lane have not been removed.

#### **D. DETERMINATION OF VIOLATIONS**

1. Mrs. Howard has violated RSA 482-A:3,I by placing fill in two locations (approximately 1,728 square feet at the corner of Blueberry Drive and Chipmunk Lane, and approximately 546 square feet of fill from in front of a culvert along Blueberry Drive). The fill totaled approximately 2,274 square feet.
2. Mrs. Howard has violated RSA 482-A:3,I by dredging approximately 2,500 square feet of wetlands to create a pond without a permit from DES.

#### **E. ORDER**

Based on the above findings, DES hereby orders Mrs. Howard as follows:

1. Within ten days the date of this Administrative Order, remove the approximately 1,728 square feet of fill blocking the stream at the intersection of Blueberry Drive and Chipmunk Lane on the Property.

2. Within ten days the date of this Order, remove 546 square feet of fill and allow water to flow through the culvert from the northerly ditch on Blueberry Drive on the Property.
3. Within ten days the date of this Order, submit restoration plans for the 2,500 square foot pond on the Property to restore it to its original condition, to include:
  - a. A plan with dimensions, drawn to scale, showing:
    1. Existing conditions, with wetland boundaries; and
    2. Proposed conditions after reestablishing the jurisdictional areas;
  - b. A detailed description of the proposed means of erosion control (silt fence, hay bales, etc.) and stabilization of the restoration area;
  - c. A detailed description of the proposed planting plan for the stabilization and revegetation of the restoration area and control of invasive species such as purple loosestrife (*Lythrum salicaria*) and common reed (*Phragmites australis*);
  - d. A description of the proposed construction sequence and methods for accomplishing restoration and anticipated restoration compliance date.
  - e. A description of the method of documenting at least 75% survival of all vegetation planted during the restoration project. This should include at a minimum monitoring progress reports for two successive growing seasons following completion of the restoration project.
  - f. A provision to delineate the wetlands within the restoration site after 2 full growing seasons and document the delineation with data forms and depict the delineation on a site plan.
4. Retain a qualified wetland scientist to supervise the implementation of the restoration plan and to submit the restoration progress reports.
5. Implement the restoration plan only after receiving written approval and as conditioned by DES.
6. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Mary Ann Tilton  
DES Water Division  
6 Hazen Drive  
PO Box 95  
Concord, NH 03302-0095  
Fax: (603) 271-6588  
e-mail: mtilton@des.state.nh.us

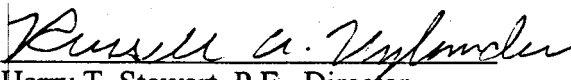
## F. APPEAL

Any party aggrieved by this Order may apply for reconsideration with respect to any matter determined in this action within 20 days from the date of the Order. A motion for rehearing must describe in detail each ground for the request. DES may grant a rehearing if in its opinion, good reason is provided in the motion. Filing an appeal or motion for reconsideration of the Order will not automatically relieve you of your obligation to comply with the Order.

## G. OTHER PROVISIONS

Please note that RSA 482-A provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Mrs. Howard remains obligated to comply with all applicable requirements, in particular removing fill from the two locations as specified. DES will continue to monitor Mrs. Howard's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Strafford County Registry of Deeds so as to run with the land.

  
Harry T. Stewart, P.E., Director  
Water Division

  
George Dana Bisbee, Assistant Commissioner

Certified Mail/RRR: 7001 1940 0002 4869 5680

cc Gretchen Rule, Administrator, DES Legal Unit  
Public Information Officer, DES Public Information Center  
Jennifer Patterson, Senior Asst. Attorney General, EPB, NHDOJ  
Strafford County Registry of Deeds  
Farmington Selectmen  
Farmington Conservation Commission  
F.X. Bruton, esq., McNeil, Taylor, & Gallow  
File 2001-1431